



Delivery of the East Bayfront Community Recreation Centre

Date: June 6, 2019

To: General Government and Licencing Committee

From: General Manager, Parks, Forestry & Recreation

Wards: Ward 10 - Spadina - Fort York

SUMMARY

This report requests City Council authority to enter into agreements for the delivery of a 25,000 square foot community recreation centre (the Recreation Centre) located within a new mixed-use building in Block 4 on Plan 66M2542 (Block 4) in the East Bayfront Precinct located at 261 Queens Quay East (see Attachment 1). The project is to be delivered by Aqualuna Bayside Toronto Partnership (development manager/developer), and Deltera Contracting Inc. (the constructor). The Aqualuna Bayside Toronto Partnership is between a Hines entity (Hines) and its residential partner, a Tridel entity (Tridel).

This report also seeks authority to transfer cash flow funding up to \$22.0 million from the 2019 Council Approved Capital Budgets and future year commitments for Waterfront Revitalization Initiative and Parks, Forestry and Recreation, to the development manager, the constructor and the architect to design and deliver both the base/shell and fit-out of the Recreation Centre.

The major terms for delivery of the Recreation Centre and associated agreements are presented in this report and form part of the approval being sought by Council.

Lastly, the report seeks approval for the General Manager of Parks, Forestry and Recreation to execute the contract with the design architects for the Recreation Centre in order for Parks, Forestry and Recreation to manage the design specification process directly.

This report has been prepared by Parks, Forestry & Recreation, with input from the Waterfront Secretariat, Real Estate Services, Purchasing and Materials Management, Corporate Finance, and in consultation with Legal Services.

RECOMMENDATIONS

The General Manager of Parks, Forestry and Recreation recommends that:

1. City Council authorize the City to enter into, and the General Manager, Parks, Forestry & Recreation to execute, on behalf of the City, a Development Management Agreement for the development of an approximately 25,000 square foot community recreation centre ("the Recreation Centre") within a mixed-use project containing residential, commercial and retail components (the "Block 4 Project") at 261 Queens Quay East with Aqualuna Bayside Toronto Partnership, a general partnership of 2572942 Ontario Limited and Hines Bayside IV ULC, and with the partnership's nominee Aqualuna Bayside Toronto Inc. substantially on the terms and conditions summarized in Attachment 3, and on such other terms and conditions deemed appropriate by the General Manager, Parks, Forestry & Recreation and the City Solicitor;
2. City Council authorize the City to enter into, and the General Manager, Parks, Forestry & Recreation to execute, on behalf of the City, a Construction Management Contract for the construction of the base/shell of the Recreation Centre and a Construction Management Contract for construction of the fit out of the Recreation Centre, both with Deltera Contracting Inc., substantially on the terms and conditions summarized in Attachment 4, and on such other terms and conditions deemed appropriate by the General Manager, Parks, Forestry & Recreation and the City Solicitor;
3. City Council authorize the City to enter into, and the General Manager, Parks, Forestry & Recreation to execute a single contract for an estimated \$600,000 from the project budget for full consulting services with the Perkins + Will Canada Inc., the architect currently retained by the developer for the design of the Recreation Centre;
4. Conditional upon the execution of acceptable agreements in accordance with Recommendations 1, 2 and 3 above, City Council authorize the flow of the following funding to Aqualuna Bayside Toronto Partnership, a general partnership of 2572942 Ontario Limited and Hines Bayside IV ULC, or its nominee, and to Deltera Contracting Inc., in accordance with the Development Management Agreement and Construction Management Agreements respectively, and to Perkins + Will Canada Inc. to the maximum fee specified in Recommendation 3, for the delivery of the Recreation Centre:
 - (a) up to \$15.000 million from the 2019 Council Approved Waterfront Revitalization Initiative's Capital Budget and future year commitments, from the project "Precinct Implementation Projects", with funding of \$1.500 million from Debt and \$13.500 million from Development Charges (XR2114); and
 - (b) up to \$7.000 million from the 2019 Council Approved Parks, Forestry and Recreation Capital Budget and future year commitments, for the East

Bayfront Community Centre sub-project in the Community Centre project, with funding of \$6.300 million from Development Charges (XR2114) and \$0.700 million from South District Parkland Development Reserve Fund (XR2209) projects;

5. City Council authorize the City, as Vendor, to enter into an Amending Agreement of Purchase and Sale (Amended APS) with Aqualuna Bayside Toronto Inc., for and on behalf of Aqualuna Bayside Toronto Partnership, as Purchaser, to amend the agreement of purchase and sale of Block 4, on the following terms and conditions, and such other terms and conditions deemed appropriate by the Deputy City Manager, Corporate Services, in consultation with the General Manager, Parks, Forestry & Recreation, and in a form satisfactory to the City Solicitor:
 - (a) the Amended APS will not become effective unless and until the City confirms that the City is proceeding with the Recreation Centre in accordance with the terms of the Development Management Agreement for the base/shell;
 - (b) Waterfront Toronto and the Purchaser shall have entered into an amending development agreement in respect of the development of Block 4 which includes the Recreation Centre;
 - (c) the City will retain freehold ownership of the strata parcel of land designated for the Recreation Centre as shown on an initial strata plan for closing;
 - (d) the parties will enter into a shared facilities agreement in respect of the shared areas ("Shared Areas") of the Block 4 Project and other operational matters in recognition of the integration of the Recreation Centre with the other components of the Block 4 Project, substantially on the terms and conditions set out in Attachment 5 (the "Shared Facilities Agreement");
 - (e) the City's share of the shared facilities budgets for the operation and maintenance of the Shared Areas and various operational matters in respect of the overall Block 4 Project for the first year of operation of the Recreation Centre are estimated not to exceed \$10,000 (the "Shared Facilities Budget");
 - (f) on the closing of the APS, the Recreation Centre lands will be subject to the Restrictions on Use and the Right of First Opportunity substantially on the terms and conditions set out in Attachment 6;
 - (g) upon the completion of the construction of the Recreation Centre and the registration of the final strata plan for the Block 4 Project, the City, as transferor or transferee, will enter into such reconveyances of land and transfers of easements for nominal consideration as necessary to legally describe the lands for the Recreation Centre as City-owned freehold space, together with and subject to appurtenant and servient easement interests; and

- (h) if the City has not proceeded with the fit-out of the Recreation Centre in accordance with the terms of the Construction Management Agreement, and the City has failed to commence construction of the fit-out of the Recreation Centre within the two (2) year period following 50% occupancy of the residential condominium, the Purchaser will have the option to purchase the City's freehold strata lands designated for the Recreation Centre, together with the Recreation Centre base/shell as then-existing, for fair market value.
6. City Council authorize the City to enter into the Shared Facilities Agreement substantially on the terms and conditions contained in Attachment 5 and such other terms and conditions deemed appropriate by the General Manager, Parks, Forestry & Recreation, in consultation with the Deputy City Manager, Corporate Services, and in form satisfactory to the City Solicitor;
 7. City Council authorize the General Manager, Parks, Forestry & Recreation to approve the Shared Facilities Budget, to negotiate, administer, manage, execute and deliver on behalf of the City, the Shared Facilities Agreement, to designate any person or persons to represent the City on any shared facilities committee or subcommittee formed under the Shared Facilities Agreement, to provide any authorization, direction or instructions to such designated person(s) in carrying out his/her role(s) as a City representative(s), to carry out all dispute resolution processes, and the General Manager, Parks, Forestry & Recreation his/her successor/designate(s) is authorized to provide any consents, approvals, waivers notices, certificates of compliance, status certificates and other documentation under the Shared Facilities Agreement, provided that the General Manager, Parks, Forestry & Recreation may, at any time, refer consideration of such matters (including their content) to City Council for its determination and direction;
 8. City Council authorize the General Manager, Parks, Forestry & Recreation to make all decisions, including any necessary elections, waivers, approvals, consents and notices, on behalf of the City during the pre and post construction and construction phases of the Recreation Centre in accordance with the project agreements set out in Recommendations 1, 2 and 3 and any other agreements or documentation entered into as a result of those agreements; and
 9. City Council authorize the City to enter into, and the General Manager, Parks, Forestry & Recreation to execute on behalf of the City any ancillary agreements contemplated under or arising out of the Development Management Agreement, the Construction Management Agreement, the Shared Facilities Agreement, the Amended Agreement of Purchase and Sale, or the construction of the Recreation Centre, in consultation and in a form satisfactory to the City Solicitor.

FINANCIAL IMPACT

The 2019 Council Approved Capital Budgets and future year commitments for Waterfront Revitalization Initiative and Parks, Forestry and Recreation include a total of \$22.0 million for the East Bayfront Community Centre project.

For Waterfront Revitalization Initiative, a total project cost of \$15.0 million is cash flowed over 2019-2022 under Precinct Implementation Projects (CWR003-10): \$0.500 million in 2019, \$10.000 million in 2020, \$3.000 million in 2021; and \$1.500 million in 2022. Funding for the \$15.0 million is made of the following sources: \$1.500 million from Debt and \$13.500 million from Development Charges (XR2114).

PFR's Capital Budget and future year commitments include a project cost of \$7.000 million cash flowed in 2021, with funding of \$6.300 million from Development Charges (XR2114) and \$0.700 million from South District Parkland Development Reserve Fund (XR2209).

Approval of the recommendations of this report will grant authority to the City to negotiate and execute agreements with Aqualuna Bayside Toronto Inc., Aqualuna Bayside Toronto Partnership, a general partnership of 2572942 Ontario Limited and Hines Bayside IV ULC, and Deltera Contracting Inc. for the delivery of the Recreation Centre, and will enable the City to transfer up to \$22.0 million, conditional upon the execution of acceptable agreements.

Consistent with the recommendations adopted by City Council as part of the 2019 Capital budget process, the funding for this project has been received and all funding criteria for this capital project to proceed have been met.

Operating costs for the shared spaces within the building associated with the Recreation Centre will be shared between Aqualuna Bayside Toronto Inc., Parks, Forestry and Recreation, the retail component and the commercial parking garage component. The Shared Facilities Agreement will specify the responsibility for the operating costs of these shared spaces. The estimated gross operating costs to the City for the shared spaces associated with the Recreation Centre is expected to be approximately \$10,000 in the first year. Further work is required including final facility design, development of an operating agreement among the parties and City program / service planning, to determine more precise overall operating costs for the facility. Once confirmed, these costs will be included in future Operating budget submission for Parks, Forestry and Recreation.

The Chief Financial Officer and Treasurer has reviewed this report and agrees with the financial impact information.

DECISION HISTORY

The Recreation Centre was endorsed as part of the original East Bayfront Precinct Plan, which was adopted by City Council on December 7, 2005:

<https://www.waterfrontoronto.ca/nbe/wcm/connect/waterfront/71663e82-9ef0-4ff1-af30-ab9ef9ef2342/4491a914d1783.pdf?MOD=AJPERES>.

City Council decision:

<https://www.toronto.ca/legdocs/2005/agendas/council/cc051205/pof10rpt/cl002.pdf>

City Council granted authority for the Bayside lands including the subject site to be sold/leased to Hines in August 2010. Hines subsequently partnered with Tridel on the residential component of Bayside. The development partnership on this site is legally known as Aqualuna Bayside Toronto Partnership. The transaction documents provide for a community recreation centre of approximately 25,000 square feet in Bayside. Hines and Waterfront Toronto identified Block 4 as the preferred location within the Bayside development:

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2010.EX46.33>

City Council approved the affordable housing pilot project on the Aquavista Bayside development site with the result that Block A1/A2 (now Block 4) became a market development site. The City has entered into an existing Agreement of Purchase and Sale with the developer for the sale of all of Block 4:

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2014.EX42.16>

City Council reconfirmed the need for the community recreation centre through approval of the Facilities Master Plan report on November 7, 2017:

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2017.EX28.2>

At its meeting of March 7, 2019, City Council approved the Waterfront Revitalization Initiative's Capital Budget and future year commitments, including \$15.0 million, for the Precinct Implementation Project, through item EX2.5 (233-235):

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2019.EX2.5>

City Council, at the June 18 and 19 2019 meeting approved the creation of a new capital sub-project called East Bayfront Community Centre in PFR's 2019 Ten-Year Capital Budget and Plan, with a project cost of \$7.000 M and cash flow in 2021 through item EX6.19:

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2019.EX6.19>

COMMENTS

Background

Parks, Forestry and Recreation (PFR) is working with the City's Waterfront Secretariat and Waterfront Toronto to integrate a 25,000 square foot community recreation centre into the base of Block 4, identified in the drawing in Attachment 1. The Recreation Centre will contain a gymnasium, multi-purpose rooms, a running track, a dance studio and a teaching kitchen. A rendering of the facility can be found in Attachment 2.

The location of a community recreation centre in Bayside dates back to the Bayside Project Agreement executed in 2012 where Hines agreed that at Waterfront Toronto's request, up to 25,000 square feet would be set aside in Bayside for a community

recreation centre. Ultimately, the location chosen in Bayside was the Block 4 site where Hines and its residential partner Tridel are purchasing the land from the City for a mixed-use development. The space for the Recreation Centre within the building (ground floor along Parliament Slip frontage), will be retained in strata ownership by the City. Although the Bayside Project Agreement requires the developer to provide the physical space and construct the base/shell of the Recreation Centre, it places no financial obligations on the developer. Instead, the Project Agreement requires the developer to be compensated for the "Actual Cost of Construction" (as defined in these agreements) which includes all out-of-pocket costs for planning, design, financing, construction, project management, consultant fees, legal fees, permits, etc. in accordance with a budget previously approved by Waterfront Toronto.

Purpose of the Report

The original transaction documents, while providing for Waterfront Toronto to request 25,000 square feet to be set aside for a community recreation centre, did not delve into the details regarding respective roles of the City and Waterfront Toronto in providing for the facility nor the delivery details between the City and the delivery agents. As this facility will be a City-owned community recreation centre operated by PFR, it is appropriate that PFR, in consultation with Waterfront Toronto, oversee the delivery of the facility. Furthermore, while delivery of the base/shell at cost was identified as a Hines obligation, the fit-out of the community recreation centre was not addressed. After review, staff believe the most prudent course is that Deltera, who is now delivering the base/shell on behalf of Hines and its partner Tridel, also be contracted to construct the fit-out. The benefits include bulk pricing, coordination/orderly management between the base/shell and fit-out work (including coordination of warranties) and optimal timing of delivery. Under the Occupational Health and Safety Act, there can only be one constructor on site at the same time. Therefore, if a different fit-out constructor was used, the City would have to wait until Deltera was off site in order to begin the fit-out. Not only would this delay delivery of the facility; the delay could also result in increased costs.

Budget

Based on a budget prepared by Hines/Tridel and the City's cost estimator, in consultation with City staff, it is projected that the total project cost to complete the Recreation Centre will be approximately \$22.0 million. This allocation is included in the 2019 Council Approved Capital Budgets and Plans for Waterfront Revitalization Initiative and Parks, Forestry and Recreation.

Components

Project delivery consists of construction of both the base/shell and the fit-out of the Recreation Centre. In the case of this project, the base/shell means the structural shell necessary for the construction of the Recreation Centre and includes space and elements within the project that are shared with the City facility or that enclose, delineate or support City functions within the City demised space. The fit-out means the construction that is necessary for the City to be able to use the Recreation Centre such as the HVAC system, interior partitioning, floor finishes, etc.

Transaction Agreements

In order to facilitate the construction and delivery of the Recreation Centre, the City is proposing to enter into a number of legal agreements. The drafting of these agreements has been a negotiation among all parties, subject to City Council approval. The clauses and conditions of these agreements are intended to protect the City's interests through the design, construction, delivery and ongoing operation of the Recreation Centre. The major terms and conditions of these agreements can be found in Attachments 3 to 5 as well as recommendations to this report. Their purpose is outlined below:

- Development Management Agreement (Attachment 3)
 - Between the City and Aqualuna Bayside Toronto Inc., and Aqualuna Bayside Toronto Partnership, a general partnership of 2572942 Ontario Limited and Hines Bayside IV ULC
 - Addresses the design, management, coordination project management and other services related to the development of the Recreation Centre, as set out in Attachment 2. The Development Management Agreement applies only to the delivery of the base/shell of the building; the management of the fit-out is covered by one of the Construction Management Agreements.
- Construction Management Agreements (CCDC 5B) (Attachment 4)
 - Between the City and Deltera Contracting Inc. as the construction manager
 - Addresses respective roles of the parties pre construction, during construction and post construction, including scheduling, recommending materials, building systems and possible economies, procuring and managing subcontractors, turnover requirements, warranties, payment requirements, change orders, substantial performance, bonding and liabilities.
 - There shall be two Construction Management Agreements - one contract for the construction of the base/shell of the Recreation Centre and one for the fit-out
- Shared Facilities Agreement (Attachment 5)
 - Between the City, the future condominium corporation and the future retail and commercial parking garage components
 - Governs ongoing operation of the various shared facilities of the building through terms and conditions that all parties must adhere to, and outlines the proportionate share of shared facilities costs for all parties
 - Contains clauses on participation in shared facilities committees, ownership share, cost share, maintenance obligations and rights, indemnities and insurance.
- Amended Agreement of Purchase and Sale (Recommendation 5)
 - The original Agreement of Purchase and Sale dated April 24, 2018 is for the sale of all of Block 4 and is between the City, as Vendor, and the developer, as Purchaser
 - Required to carve out the strata parcel of land designated for the recreation centre from the original Agreement of Purchase and Sale

- Deals with limitations on use and right of first opportunity, fit-out timeline requirements, and requirements for the City to enter into a Shared Facilities Agreement

According to the senior Bayside transaction terms, if the above agreements are not finalized, and a notice to proceed with construction of the base/shell of the Recreation Centre is not issued by the City, by November 11, 2019, the Recreation Centre will not be included in the Block 4 development; the funds already spent on design and legal fees will not be recovered; and alternative locations for the Recreation Centre will need to be identified outside of Bayside.

It should also be noted that in addition to entering into the above agreements, City staff are seeking authority to execute a contract for full consulting services with Perkins + Will Canada Inc., who is the architect currently retained by the developer for the design of the Recreation Centre. This will allow the City to manage the design and contract administration process directly. The estimated amount of \$600,000 for this contract is contained within the overall project budget of \$22 million. The architect in turn will contract directly with the sub-consultants who are currently retained by the developer for consulting services associated with the Recreation Centre.

Timing

The developer submitted an application for Site Plan approval in April 2018. The closing of the real estate transaction is expected by December 2019. Construction is currently being targeted to begin in Q4 2019 and be complete in 2023. This would also include the opening of the Recreation Centre.

Public Consultation

A public consultation meeting was held in March 2019, with roughly 80 members of the public in attendance. The community response was generally positive, with programming ideas suggested such as senior's activities and team sports. Public reaction to the design of the Recreation Centre was also very positive, and there was a strong desire for the Recreation Centre to have its own public presence and identity. Attendees of the meeting will be updated as the design progresses, and will be invited to provide feedback throughout the process.

CONCLUSION

PFR, the Waterfront Secretariat and Waterfront Toronto are advancing the development of the new East Bayfront Community Recreation Centre that will be delivered through agreements with Hines/Tridel and Deltera. The new Recreation Centre will provide a valuable contribution to the development of a complete community in the new Bayside district as envisioned in the East Bayfront Precinct Plan and was a priority identified in the Council approved Parks, Forestry & Recreation Facilities Master Plan. The Recreation Centre will be part of the community infrastructure for the new Bayside district, catering to the social and recreational needs of residents, and creating a community hub for the Bayside district neighbourhood. The Recreation Centre will contribute to the creation of a high quality public realm by occupying a prominent

location at the Inner Harbour and the Parliament Street Slip, providing a strong public presence on Toronto's eastern waterfront for years to come.

This report has been prepared by PFR, with input from the Waterfront Secretariat, Real Estate Services, Purchasing and Materials Management, Corporate Finance, and in consultation with Legal Services.

CONTACT

Ann-Marie Nasr, Director, Parks Development and Capital Projects, Tel: 416-395-7899, Email: Ann-Marie.Nasr@toronto.ca

Mike Pacholok, Chief Purchasing Officer, Purchasing and Materials Management, Tel: 416-392-7312, Email: Mike.Pacholok@toronto.ca

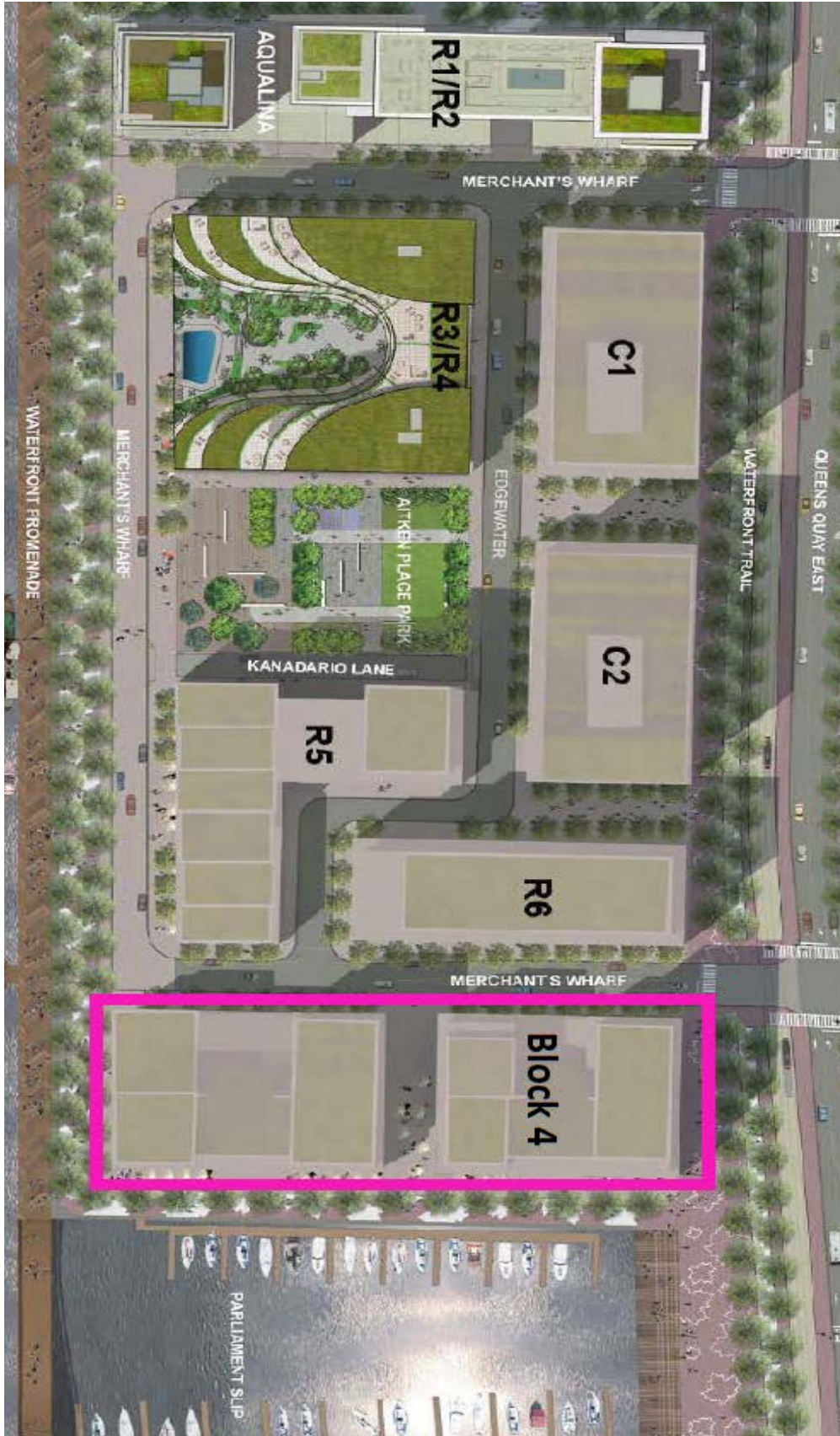
Jayne Naiman, Project Manager Waterfront Secretariat, City Planning, Tel: 416-392-0069, Email: Jayne.Naiman@toronto.ca

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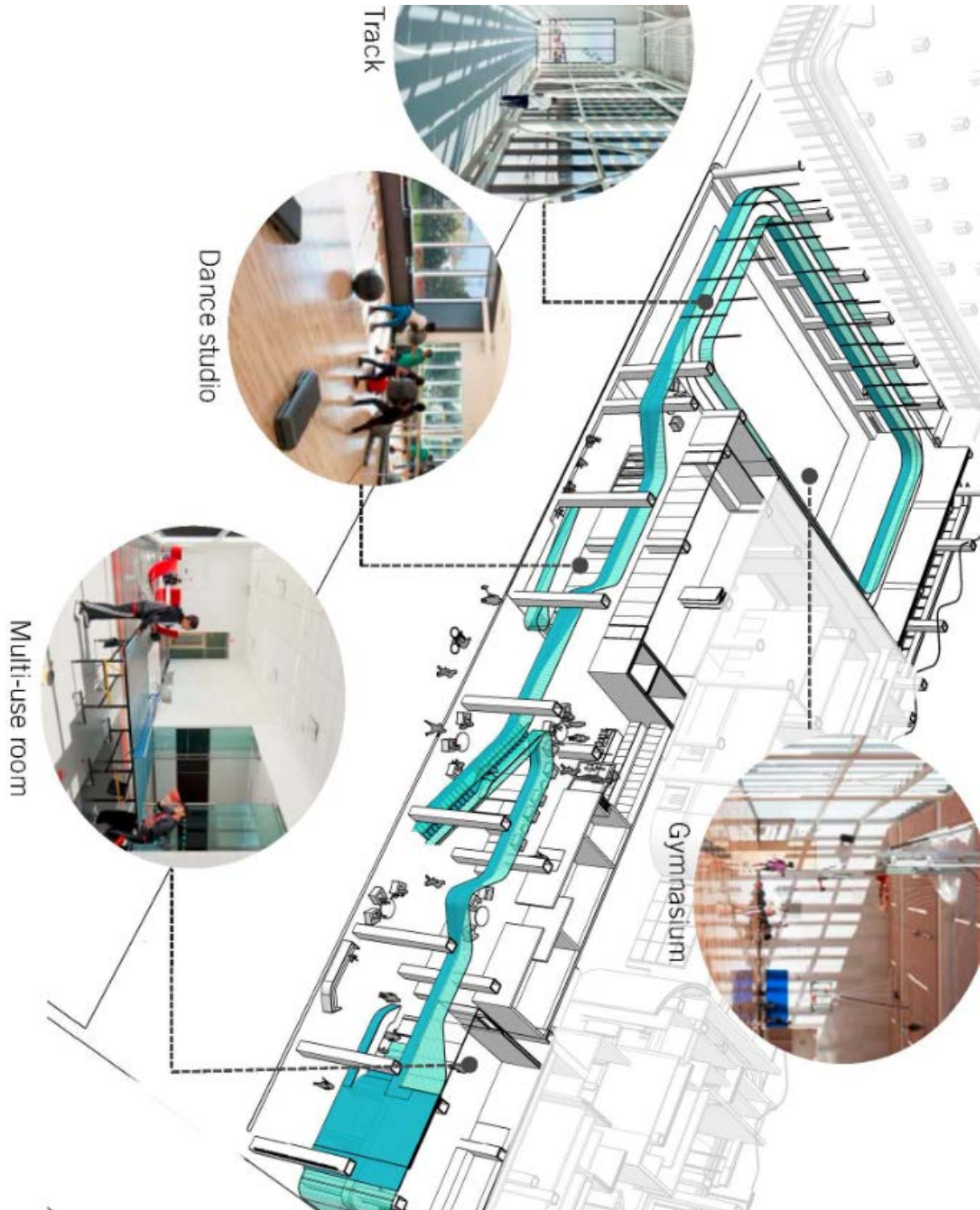
Janie Romoff
General Manager, Parks, Forestry and Recreation

Attachment 1: Concept Plan
Attachment 2: Aerial View
Attachment 3: Development Management Agreement Term Sheet
Attachment 4: Construction Management Agreement Term Sheet
Attachment 5: Shared Facilities Agreement Term Sheet
Attachment 6: Restrictions on Use and the Right of First Opportunity
Attachment 7: Registered Plan of Subdivision

Attachment 1: Concept Plan



Attachment 2: Aerial View



Attachment 3 – Terms and Conditions of East Bayfront Development Management Agreement (the "DMA")

Summary:

The City will retain a development manager to organize, coordinate, manage and administer the development activities of the Recreation Centre. The Development Management Agreement is entered into in the context of the Project Agreement and the Development Agreement, both as amended, which agreements contemplate the project management services to be provided and the fee for those services (collectively the "Senior Agreements").

Parties	City of Toronto Aqualuna Bayside Toronto Partnership, a general partnership of 2572942 Ontario Limited and Hines Bayside IV ULC, and Aqualuna Bayside Toronto Inc. (the "Nominee") (collectively the "Development Manager")
Property	PIN 21384-0221 (LT) Block 4 on Plan 66M-2542, City of Toronto on Concept Plan attached as Attachment #1 within Bayside Phase 2 subdivision of the East Bayfront Precinct. The City will retain a strata portion of the Property for the Recreation Centre. The Development Manager, as Site Developer of the Property, will develop a residential condominium, commercial/retail space, and a parking garage facility within the balance of the Property.
Approved Project Budget	The maximum expenditure for this project is \$22 million, which includes the fit out in addition to the base/shell of the Recreation Centre.
Term	From the date the agreement is executed, until 60 days following the later of Substantial Performance of the Construction Management Agreement, or the completion of all turnover requirements contemplated in the DMA. It is anticipated that the Recreation Centre base/shell shall be completed by the time of first occupancy of the residential condominium component.
Design Principles	The Recreation Centre and condominium components will be designed, developed and constructed together and share certain common facilities. Each component will have its own entrance, amenity space, elevators, corridors, etc., each for its exclusive uses.

Construction Management Agreement

The City will concurrently enter into two construction management agreements with Deltera Contracting Inc. (the construction arm of Tridel); one to manage the construction of the Recreation Centre base/shell, and one to manage the construction of the Recreation Centre fit out. The Construction Management Agreements are separately summarized.

Fee

The Development Manager is charging the City a management fee of 6% of the aggregate of the "Actual Cost of Construction" of the Recreation Centre base/shell, being all actual out-of-pocket costs of planning, design, development, financing, construction and project management, reasonable consultant's fees and disbursements (including travel costs), reasonable legal fees and disbursements, the cost of permits and approvals, land transfer taxes and servicing fees, and other similar costs. The items included in the Actual Cost of Construction and the fee are set out in the Senior Agreements of the Bayside transaction, and are to be based on a budget pre-approved by Waterfront Toronto in consultation with the City. This fee arises out of the Senior Agreements and is not negotiable. The Development Management Agreement and the 6% management fee apply only to the base/shell portion of the Recreation Centre and not to the fit out.

Services

To organize, coordinate, manage and administer the development of the Recreation Centre base/shell on behalf of the City in accordance with approved plans and specifications for the building, the Construction Management Agreement and the Recreation Centre budget. The Development Manager will coordinate and supervise consultants, assist with schematic design drawings, obtain required planning approvals; assist the City in remaining within the base/shell budget and assist with value engineering if necessary; administer invoicing between the Construction Manager and the City; coordinate any soil remediation on the lands; manage and update the construction schedule; manage the Construction Manager with a view to maintaining the schedule; provide detailed reports on the status of the project; supervise the enforcement of any warranty obligations under the Construction Management Agreement for the base/shell, and use its commercially reasonable efforts to cause the Recreation Centre Component to be completed by Deltera substantially in accordance with the approved plans, the

project budget and within the timelines set out in the approved project schedule.

Allocation of Costs

The base/shell costs will be allocated on the cost methodology determined by the quantity surveyor, as agreed to by the City and the Development Manager.

Use of Savings and Contingency

The Development Manager shall have the right to commit savings against budgeted line items (where actual procured costs are less than budgeted costs) within the approved budget without the consent of the City. The budget will also contain two separate contingencies [a contingency for increases to construction hard costs ("Construction Contingency" which shall be a minimum of 5% of total core and shell construction costs) and a further inflation contingency ("Inflation Contingency")]. The Development Manager shall not have the right to use the Construction Contingency without the City's approval unless the Development Manager, acting reasonably, determines that it is necessary to do so in order to avoid an unreasonable delay in the construction of the overall project, in which case details shall be given to the City. The Development Manager does not have the right to use the Inflation Contingency without the approval of the City, not to be unreasonably withheld or delayed.

City Policies

For delivery of the base/shell, the Development Manager will cause the Construction Manager and all trades engaged by the Construction Manager to comply with the City's Fair Wage Policy, in accordance with the residential sector of the construction industry.

Limitation on Liability

The Development Manager is requiring a limitation on liability equal to twice the amount of the Management Fee for the Recreation Centre base/shell which has been paid to the Development Manager at the relevant time.

Notice to Proceed

In accordance with the Senior Agreements of the Bayside transaction, the City must advise the Development Manager of its intent to proceed with construction of the Recreation Centre base/shell by no later than November 11, 2019 (the "Termination Date"). To allow the City to make a knowledgeable decision on the basis of actual tendered pricing, the Construction Manager is to produce a revised budget report when the Recreation Centre base/shell has been 70% tendered, but contracts have not yet been awarded. The Development Manager will use its best efforts to provide the revised budget report incorporating the 70%

tender to the City no later than August 15, 2019. If the City is prepared to proceed on the basis of the revised budget report provided by the Development Manager, it shall issue a "notice to proceed" with the construction of the Recreation Centre base/shell in the condominium development by November 11, 2019. Once the City has issued the notice to proceed, the City is committed to funding the construction of the Recreation Centre base/shell.

If the City does not issue the notice to proceed before the Termination Date, the Recreation Centre will not be included in the condominium development; the property that was set aside for the Recreation Centre will be sold to the Nominee, and the Development Manager shall be reimbursed for the Actual Cost of Construction incurred to the Termination Date, based on a budget pre-approved by Waterfront Toronto in consultation with the City.

Default Provisions

In the event of a default by the City, the Development Manager may seek specific performance, an injunction, or another equitable remedy; bring an action against the City to recover damages and/or complete construction of the Recreation Centre base/shell to the extent deemed necessary by the Development Manager in order to complete the overall project, and be entitled to be paid by the City for all amounts payable under the DMA, plus interest.

In the event of a default by the Development Manager, the City may seek specific performance, an injunction, or another equitable remedy or bring an action against the Development Manager to recover damages.

Where the construction lender has appointed a third party to complete the project, the City shall accept the third party in substitution for the Development Manager, provided that all contracts associated with the construction of the Recreation Centre base/shell are adopted by the third party; all of the City's reasonable costs incurred in connection with the default are paid by the third party or the Development Manager, and any amounts payable by the Development Manager to the City under the DMA are paid in full.

Attachment 4 – Terms and Conditions of the Construction Management Agreements (the "CMAs")

Summary

The City will enter into two Construction Management Agreements (CCDC5B) with Deltera Contracting Inc.; one for the construction of the Base/Shell of the Recreation Centre, and the second for the Fit Out of the Recreation Centre, in accordance with the plans and specifications approved by the City.

Parties	City of Toronto ("City") Deltera Contracting Inc. (the "Construction Manager")
Property	PIN 21384-0221 (LT) Block 4 on Plan 66M-2542, City of Toronto on Concept Plan attached as Attachment #1 within Bayside Phase 2 subdivision of the East Bayfront Precinct.
Form of Contracts	CCDC5B Construction Management Contract for Services and Construction (2010) (the "CCDC5B"), subject to amendments agreed to by the parties and reflected in Supplementary Conditions. The CCDC5B contains provisions relating to the management of construction that are industry standard.
Fee	The Construction Manager is charging the City a construction management fee of 3.25% of the cost to the City of constructing the Recreation Centre base/shell and fit out.
Schedule	A construction schedule will be delivered.
Services	The CCDC5B contract (including Schedule A1 and the Supplemental Conditions) lists the services to be provided by the Construction Manager preconstruction, during construction and post-construction, including attending meetings; estimating and cost control; scheduling; providing recommendations on materials, building systems and possible economies; procuring and managing subcontractors, and conducting post-construction review, all in accordance with approved plans, the project budget and within the timelines set out in the approved project schedule.
City Policies	With respect to the Recreation Centre fit out, the Construction Manager and all trades engaged by the Construction Manager shall comply with the City's Labour Trades Contractual Obligations in the Construction Industry

and all City policies, including the Fair Wage Policy. For the Recreation Centre base/shell, the Construction Manager and all trades engaged by the Construction Manager shall comply with the City's Fair Wage Policy, in accordance with the residential sector of the construction industry.

Notice to Proceed

Not later than 12 months following the issuance by the City of the notice to proceed with the Recreation Centre base/shell, the City shall prepare and deliver to the Construction Manager and the Development Manager completed plans for the Recreation Centre fit out. The Construction Manager is required to produce a revised budget report when the Recreation Centre fit out has been 80% tendered, but contracts have not yet been awarded. If the City is prepared to proceed with the construction of the fit out on that basis, it shall issue a "notice to proceed" with the construction not later than 6 months following receipt of such revised budget. If the City does not issue the notice to proceed within the time provided, the Recreation Centre fit out shall not be constructed by the Construction Manager, but the City shall retain ownership of the property, subject to any rights the Development Manager may have to purchase the Recreation Centre Property.

The process for issuing the notice to proceed with the construction of the Recreation Centre base/shell is set out in the Development Management Agreement and described in Attachment #1.

Default Provisions

The City will have the benefit of the CCDC5B remedies which include termination of the Construction Management Agreements after the expiration of certain cure periods.

Recreation Centre Component Turnover

The Construction Management Agreements will contain provisions relating to the turnover of the Recreation Centre Component, including the following:

- a) a right to inspect prior to turnover
- b) a provision for training on building systems.

Warranty

Other than extended warranties that will be provided in accordance with the Construction Management Agreements, the Construction Manager will provide a two year warranty for the Recreation Centre base/shell and the fit out.

Bonding

The Construction Management Agreement for the Recreation Centre fit out will require the Construction Manager to obtain from the trades, a Performance Bond and

a Labour and Material Bond each in the amount of 50% for the Recreation Centre fit out, where possible. The Construction Management Agreement for the base/shell will require such bonds where possible and commercially reasonable.

- Limitation on Liability** The Construction Manager is requiring a limitation on liability of \$2 million on the Construction Management Agreement for the Recreation Centre base/shell and \$500,000 on the Construction Management Agreement for the Recreation Centre fit out.
- Risk Allocation** The Risk Allocations of the CCDC5B will be amended to include the City's requirements for insurance.
- Apprenticeship** The Construction Manager will work with the Toronto Building Trades Council's Hammer Heads Program to provide skill and employment based training within the construction industry by making apprenticeship opportunities available to youth living in high-risk environments.

**Attachment 5
MAJOR TERMS: SHARED FACILITIES AGREEMENT
AQUALUNA PROJECT
CITY COMMUNITY CENTRE**

<p>Parties</p>	<p>Aqualuna Bayside Toronto Inc., ("Aqualuna") or "Declarant"</p> <p>Condominium Corporation (the "Condominium")</p> <p>City of Toronto ("City")</p>
<p>Components of the Project</p>	<p>The Project consists of four components:</p> <p>"C" The "Condominium", the "Condominium Corporation, (the "Condominium Lands"),</p> <p>"CC" The "Community Centre", the "Community Centre Owner" (the "Community Centre Lands"),</p> <p>"CR" the "Commercial/Retail Component", the "Commercial Retail Owner", (the "Commercial/Retail Lands") and</p> <p>"CP" the "Commercial Parking Garage", the "Commercial Parking Owner" (the "Commercial Parking Garage Lands").</p> <p>Sometimes referred to as "Contributors" or "Co-Contributors" or "Four Contributors"</p>
<p>Shared Facilities</p> <p>Service Room Units/ Shared Servicing Systems</p>	<p>The "Shared Facilities" are the Shared Service Room Units and Shared Servicing Systems shared by the Contributors on either a Four-Way, Three-Way or Two-Way basis.</p> <p>The Four-Way Shared Service Room Units are:</p> <ul style="list-style-type: none"> • Shared Main Electrical Room Unit • Shared Emergency Generator Room Unit • Shared Sprinkler/Fire Pump Room Unit • Shared Storm Water Tank Room Unit • Shared Telecommunication (Beanfield) Room Unit • Shared Water Meter Room Unit. <p>The Three-Way Shared Service Room Units, shared among C/CR/CC are:</p> <ul style="list-style-type: none"> • Shared Irrigation Room Unit

	<ul style="list-style-type: none"> • Shared Loading Bay Unit • Shared Visitors Bicycle Storage Room Unit <p>The "Shared Servicing Systems" are the servicing pipes, wires, cables, conduits and systems intended to be shared by two or more components of the Project, including the electricity, water, storm and sanitary sewer systems, gas systems, emergency systems, heating and cooling systems, computer controlled access systems, security/fire alarm systems, telephone and cable and internet systems.</p>
<p>Location of Shared Facilities</p>	<p>There are <u>no</u> Shared Facilities within the Community Centre. There are no Shared Facilities within the Commercial Retail Component.</p> <p>Most of the Shared Facilities are within the Condominium Lands. Some Shared Facilities are within the Commercial Parking Lands.</p>
<p>Ownership of Shared Facilities</p>	<p>The City will not have an ownership interest in the Shared Facilities, but will be granted easements over the Shared Facilities.</p> <p>The various "Service Room Units", all of which are located within the Condominium Lands, will be owned by the other Contributors as tenants-in-common.</p> <p>The Contributors will be prohibited from transferring, charging or selling the Service Room Units (inasmuch as same must be operated, maintained and repaired for the benefit of the Contributors).</p> <p>Notwithstanding the foregoing, the Retail Component Owner and Commercial Parking Owner shall be entitled to transfer their ownership interests to any transferee of the Retail Component or Commercial Parking Component (such that the owners of the Retail Component and Commercial Parking Component from time to time will also own the corresponding interest in the Service Room Units.)</p>
<p>Shared Facilities Committee and Subcommittees</p> <p>Roles</p>	<p>There will be one omnibus Shared Facilities Committee comprise of representatives of each of C, CR, CP, and CC have the following membership: 11 members total; 5 from C, 2 from CR, 2 from CP and 2 from CC.</p> <p>The Shared Facilities Committee will be responsible for the management, control, operation, maintenance and repair</p>

	<p>of the Four-Way Shared Facilities in a first class standard, will procure and maintain Shared Facilities Insurance, and will carry out the other duties set out in the Shared Facilities Agreement (the "Agreement") pertaining to the Four-Way Shared Facilities on behalf of all Contributors.</p> <p>Subcommittees will be formed by the Shared Facilities Committee for those Shared Facilities that are shared by the Contributors on a Three-Way or Two-Way basis, and the Subcommittees will have the same role as the Shared Facilities Committee in respect of applicable Three-Way and Two-Way Shared Facilities.</p> <p>Any and all disputes regarding the manner in which any of the Shared Facilities are utilized, insured, operated, maintained, and/or repaired, as well as any and all disputes regarding the Shared Facilities Budget(s) and/or costs (or any portion thereof) in connection therewith, shall be submitted to (and ultimately be resolved by) mediation and/or binding arbitration, pursuant to the alternative Dispute Resolution provisions.</p>
<p>Property Manager Role</p>	<p>Whereas the roles of the Shared Facilities Committee and Subcommittees are primarily that of decision-makers/approvers, the actual carrying out of administrative work, including the following, would be done by a qualified Property Manager on behalf of all Contributors:</p> <ul style="list-style-type: none"> • preparation of the Shared Facilities Budgets/ Reconciliation Statements for approval by the Shared Facilities Committee/Subcommittees; • collection of the financial proportionate shares of the approved budgeted costs from the Contributors; • retaining third-party service providers, contractors to carry out required maintenance and repair work that has been approved by the Shared Facilities Committee/Subcommittees; • procurement of insurance for the Shared Facilities; • retaining a qualified environmental consultant to carry out CPU obligations; and • generally to assist the Shared Facilities Committee/Subcommittees in carrying out their respective duties and responsibilities under the Agreement. <p>In order to help achieve economies of scale and the seamless day-to-day operations of the Condominium and the Shared Facilities Committee, the Agreement will provide that the Condominium's designated property manager will</p>

<p>Exterior Façade, Signage, Hours of Operation, etc.</p>	<p>The Agreement will contain restrictions on alterations, additions, installations, and signage on exterior facades of the various Components of the Project to maintain an aesthetically consistent appearance of the Project.</p> <p>There will be set hours of operation for the use of the Loading Unit.</p> <p>Other reasonable operational matters or restrictions may be included in the Agreement in recognition that the Community Centre is integrated within a mixed use development and that the interests of the various Components will need to be respected.</p>
<p>Exclusive City Equipment and Systems serving the Community Centre Lands</p>	<p>The Exclusive City Equipment and Systems are the equipment, fixtures and systems that service only the Community Centre Lands.</p> <p>The Exclusive City Equipment and Systems shall be owned by the City. The City shall maintain, repair and insure the Exclusive City Equipment and Systems at the City's sole cost.</p> <p>The City's servicing, maintenance and repair Easement over the other Components will be in respect of both Shared Servicing Systems and Exclusive City Equipment and Systems.</p>
<p>Easements</p>	<p>The Community Centre Lands will have the benefit of the following Easements for no consideration:</p> <ul style="list-style-type: none"> • Vehicular and Pedestrian Access & Egress Easements (over the Condominium Lands and over the Commercial Parking Garage Lands, if necessary; • Easements over and access to all portions of the Aqualuna Project that comprise the "Community Centre Lands", including the Community Centre itself, the Community Centre Mechanical Room, Community Centre Electrical Room, Community Centre Garbage Room, Community Centre Cooling Room, and the 3 underground parking spaces for the Community Centre; • Easements over and access to the Shared Service Room Units;

	<ul style="list-style-type: none"> • Easement over and access to 14 bicycle spaces in level A of the Condominium Lands to be dedicated for the Community Centre; • Surface Driveway and Garage Ramp Easement, if necessary, Common Walkways & Landscaped Areas Easement, if necessary Underground Garage Drivelanes & Walkway Areas Easement, if necessary; • Servicing Areas Easements, which will include access to the Shared Servicing Systems and the City's Exclusive Equipment and Systems (over Condominium Lands and any other Component, if necessary); • Ventilation and Exhaust Easements • Support Areas Easements (over the Condominium Lands and over the Commercial Parking Garage Lands, if necessary, and the Commercial Retail Lands, if necessary; and • All other easements required to access or use the Community Centre Lands. <p>The Community Centre Lands will be subject to the following Easements for no consideration:</p> <ul style="list-style-type: none"> • Servicing, Maintenance and Repair Easements (for the benefit of the Condominium); and • Support Easements (for the benefit of the Condominium). <p>Easements will be shown on a strata reference plan for the Aqualuna Project.</p>
<p>Insurance</p>	<p>The Declarant (and after the Transfer Date, the Condominium and the Shared Facilities Committee) shall arrange for and maintain the Shared Facilities Insurance.</p> <p>The City will not be a party to any Insurance Trustee Agreement.</p> <p>Each Contributor shall obtain and maintain Mandatory Insurance in respect of its own Component of the Project.</p>

	<p>Insurance coverage ("Mandatory Insurance") for the Shared Facilities will include:</p> <ol style="list-style-type: none"> 1. Commercial General Liability insurance in an amount of not less than \$5M per occurrence (to which the City will be an "added insured" in respect of the Shared Facilities Insurance); 2. All-Risk Property insurance in an amount equal to 100% replacement cost; 3. Boiler, machinery and pressure vessel insurance. <p>The City will have its own insurer and own broker with respect to the Community Centre Lands and will not be participating in a single insurance policy for the Project or participating in any co-insurance.</p> <p>The parties acknowledge that there are no Shared Facilities within the Community Centre Lands; that City is not an owner of the Shared Facilities; and that the City will not be a "named insured" under the Shared Facilities Insurance policy.</p> <p>The City will not be obtaining Shared Facilities Insurance, however the City will contribute to the costs of maintenance (the premiums and deductibles for the Shared Facilities Insurance) in accordance with its proportionate interest/costs in the Shared Facilities.</p> <p>The City will not be obtaining any appraisal of its own component, however it will obtain and maintain 100% replacement cost coverage for all property owned by the City.</p> <p>Certificates of Insurance, evidencing that the required Mandatory Insurance for the Shared Facilities has been obtained and is in place, will be provided to each Component owner annually and at such other times upon reasonable request from time to time.</p> <p>Any dispute regarding the Shared Facilities Insurance will be submitted to the Dispute Resolution Process.</p>
<p>Damage or Destruction of any Component of the Project</p>	<p>Each of the parties will maintain and repair their respective components and each will be required to rebuild and restore their respective buildings and structures in the event of damage or destruction in a good and workmanlike manner.</p>

	This obligation will ensure that the Easements described in the Agreement continue to be enjoyed by the parties in the event of damage or destruction.
Self-Help Remedies	The Agreement will provide a mechanism for a party to carry out and complete any work for which another party has failed to carry out and complete.
Easement Charge	If any party fails to pay or contribute to the monies required to be paid under the Agreement, another party may pay the amount and the amount paid shall form a lien (" Easement Charge ") on the non-paying party's lands together with simple interest in the amount of 15 % per annum, until it is paid, and enforceable in the same manner as provided in the <i>Mortgages Act</i> in respect of a mortgage in default. Interest will be calculated and payable from and including the day after the day the amount is due until payment in full of the outstanding amount is paid. Interest will be calculated only on the principal amount outstanding from time to time, and interest charges will not be added to the outstanding principal amount for purposes of calculating interest.
Certificate of Compliance	<p>Subject to Section (c), below, the parties will be obligated to provide a Certificate to any other party to the Agreement, within thirty (30) days of receiving a written request for same from such other party for a fee not to exceed the fee prescribed under the <i>Condominium Act</i> for providing a status certificate, plus HST; provided that:</p> <p>(a) the City shall not be required to provide a Certificate to the Condominium more frequently than once quarterly in any given calendar year;</p> <p>(b) no party shall be required to provide a Certificate to any Condominium unit owner or mortgagee and for clarity only the Condominium and the owner of the Commercial Retail Component (and any mortgagee of the owner of the Retail Component), and the owner of the Commercial Parking Garage, as parties to the Shared Facilities Agreement, shall be entitled to request a Certificate from the City; and</p> <p>(c) in the case of a Certificate issued by the City, the fee payable to the City shall be the fee prescribed under the <i>Toronto Municipal Code, Chapter 441 Fees and Charges</i>, for the provision of a compliance certificate under a shared facilities agreement, or if there is no such prescribed fee in the case of a shared facilities agreement, the fee shall be the fee prescribed for the issuance of a landlord/tenant acknowledgment under a complex lease on a full recovery</p>

	basis (currently set at \$1,258.83, plus disbursements and HST).
Dispute Resolution	The Agreement will include a Dispute Resolution process consisting of mandatory mediation and binding arbitration.
Mutual Indemnities	Each party will indemnify the other parties against all losses, costs, and damages suffered by the other parties by reason of the breach of the Agreement or the negligent act or omission or wilful misconduct by the party, its workers, contractors, employees, agents and those for whom they are responsible at law, save and except to the extent that they are caused by the negligent act or omission or wilful misconduct of the party claiming indemnity or its workers, contractors, employees, agents or those for whom they are responsible at law.

Attachment 6 – Restrictions on Use and the Right of First Opportunity

A. The City Community Centre Lands will be subject to a s.119 Land Titles Act Restrictive Covenant Agreement and Right of First Opportunity as follows:

A section 119 Land Titles Act restrictive covenant shall be registered on the title to the Recreation Centre property for the benefit of the residential condominium and the retail component, which restrictive covenant shall prohibit the use of the Recreation Centre property:

- (a) for any use other than a non-profit or commercial "recreation centre" (a "Recreation Centre Facility") during the first ten (10) years following the registration of the restrictive covenant ("Initial Term"),

and

- (b) following the expiry of the Initial Term, for any use other than any of the following uses:

- (i) Recreation Centre Facility;
- (ii) library;
- (iii) municipal or government office space restricted to office staff and not being open to public access;
- (iv) any other municipal or governmental program, service or use ("Governmental Use"), provided that such Governmental Use is not inconsistent or incompatible with the use of the Residential Condominium, and provided further that the prior written consent of the board of the Residential Condominium to such Governmental Use has been obtained, which consent shall not be unreasonably withheld. In the event of a dispute as to whether consent has been unreasonably withheld by the board, the dispute may be settled by arbitration;
- (v) subject to the ROFO (as hereinafter defined), any commercial use permitted by zoning other than the Prohibited Tenants and Uses clause attached as Schedule "G" to the Development Agreement;

- (c) the Developer (for the benefit of the retail component) and the City shall enter into a Right of First Opportunity Agreement ("ROFO") in favour of the Developer (which ROFO shall be assignable by the Developer to any purchaser of the retail component). The ROFO shall require the City, to notify the registered owner of the retail component in writing if it wishes to use the Recreation Centre property for a commercial use permitted by zoning other than (i) the Prohibited Tenants and Uses clause; and (ii) the uses described in (b)(i) to (iv). In such event the registered owner of the retail component shall have up to 90 days in which to exercise its right (by notice in writing to the City) to purchase the Recreation Centre property at a purchase price equal to fair market value based on highest and best use that (i) is

reasonably probable and achievable for the Recreation Centre property bearing in mind its size, location, configuration and other physical attributes; and (ii) permitted by then applicable zoning other than the Prohibited Tenants and Uses clause ("Fair Market Value"), with closing to take place a further 60 days thereafter, or, in the event of a dispute as to Fair Market Value, closing to take place 60 days after the Fair Market Value has been determined by arbitration.

In the event of dispute as to the Fair Market Value of the Recreation Centre property the dispute shall be settled by arbitration.

- (d) In the event that the Developer elects not to exercise the ROFO the ROFO will be deemed to have expired and the City or successor in title shall henceforth be prohibited from using the Recreation Centre property for any use other than the uses listed in (b) (i) to (v), except that clause (v) shall be read and construed without the words "subject to the ROFO".

B. The City Community Centre Lands may not be used for any of the uses, being the "Prohibited Tenants and Use" Schedule "G" contained in the Development Agreement between the Developer and Waterfront Toronto.

There are certain prohibited uses contained in the Development Agreement which apply to all of the commercial components of Block 4. Accordingly, the retail component and the Recreation Centre lands will be subject to the same restrictions.

